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Spin Master Ltd. and Spin Master, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPIN MASTER LTD. and SPIN MASTER, INC.,

Plaintiffs

v.

158, 20170307, 371656016, 18929434653,
AMARANTINES, BAILEYSHANDA, BEAUTIFUL
ANGEL TRADING COMPANY, BEAUTY LOOK,
BEYOND NO.1 TRADE STORE, BIG MERCHANT,
BLACK HAO SHOP, BLUE HARBOR, CAIQING
TRADE, CHARMING_FAMILY,
CHENGFENGMAOYI, CRAZT FAST STOY, DEAP
DATE YANG, DING SHENG ELECTRONIC
COMMERCE, DREAMSLINK FIRM,
DUOZIFENGCAI123, E38, ERKINO, FASHION 3C
INTERNATIONAL TRADE CO., LTD, FASHION
CHINA TRADE CO.,LTD, FASHION HUNTER,
FASHION INTERNATIONAL TRADE LTD,
FASHIONDIDI666, FASHIONJEWERY2017,
FASHIONSTAR999, FINESELLINGS, FLASTBUY,
FREELY SHOPPING, FUDAN,
FUNSHOPPINGHOME, GFBC, GOOD PRINCESS,
GOODSBYK, G-STAR FAMILY, HAGNZHOU JIYE,
HENG BO SOUND, HIGH QUALITY TOYS STORE,
HNJOING, HUI FANG TOP-RATED SELLER-01
STORE, JIANGXINANCHANG527, JIN PENG DQ,
JINGXIAOPU, KEJINGMEIMEIDA, KUALA LIPS,

18-cv-1774 (LJL)

**AMENDED
~~PROPOSED~~
FINAL DEFAULT JUDGMENT
AND PERMANENT
INJUNCTION ORDER**

LAODIE TECHNOLOGY CO., LTD, LI KA-SHING,
LINDA2011STORE, LITONGTONG8991,
LIUQIANLIUYUE, LONG LONG MARKET,
LONGING, LUCKLUCK688, LUCKY STAR 66,
LULUCAT, MAMA'S MEMORY,
MANYMANYGOODS, MIAO DUN,
MISHIDESHITOU, MPPY QQQ Y0Y0 101,
NYCHALAKH, OCTOBER AUTUMN, OLDEN,
OOBILU, OUHUADAN, OURLOVE-007,
OUYANSAINAN, POP_FASHION, QIANTOTO E-
CO, RAINBOW STAR, SELF MONTESSORI,
SEVEN TING SHOP,
SHENZHENSHIJINGCHENGYOUXIANGONGSI,
SHIZHUSHUOP, SHOPPING CENTERS, SOCIAL
SHOPPING, SUNHAPPYBUY,
TIANTIANFASHION, TOMMY, UNIQUEART,
WANGTING0089, WEIBIN'S SHOP, WEILISTORE,
WELCOMEBIUBIU, WINGED VICTORY E-
COMMERCE, WXY20170113, XGHZHONG, XIAO
XIONG, TOY STORE, XIAOZHENHONG,
YANGDONGXIA, YE1234, YUNBOSI, YUNHUA
STORE, YWYOYO, ZHEJIANG BIGBIGHOUSE
TRADE, ZLQ-VN and ZOU3133,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>	<u>Docket Entry Number</u>
Plaintiffs or Spin Master	WOW Virtual Reality, Inc.	N/A
Defendants	158, 20170307, 371656016, 18929434653, Amarantines, baileyshanda, Beautiful angel trading company, Beauty Look, Beyond NO.1 Trade Store, Big Merchant, Black hao shop, Blue harbor, caiqing trade, charming_family, chengfengmaoyi, crazt fast stoy, Deap date yang, Ding Sheng Electronic Commerce, Dreamslink Firm, duozifengcai123, e38, erkino, Fashion 3C International Trade Co., Ltd, Fashion China Trade Co.,Ltd, fashion hunter, Fashion International Trade LTD, fashiondidi666, Fashionjewery2017, fashionstar999, finesellings, flastbuy, freely shopping, FUDAN, FunShoppingHome, GFBC, Good princess, goodsbyk, G-star Family, hagnzhou jiye, Heng bo sound, High Quality Toys Store, hnjoing, Hui Fang Top-rated Seller-01 Store, jiangxinanchang527, jin peng DQ, jingxiaopu, Kejingmeimeida, Kuala Lips, laodie Technology Co., Ltd, Li Ka-shing, linda2011store, litongtong8991, liuqianliuyue, Long long Market, longing, luckluck688, Lucky Star 66, lulucat, mama's memory, manymanygoods, MIAO DUN, mishideshitou, mppy qqq y0y0 101, nychalakh, October Autumn, Olden, oobilu, ouhuadan, ourlove-007, ouyansainan, Pop_Fashion, Qiantoto e-CO, Rainbow Star, Self Montessori, Seven Ting shop, shenzhenshijingchengyouxiangongsi, shizhushuop, shopping centers, Social Shopping, sunhappybuy, tiantianfashion, tommy, UniqueArt, wangting0089, weibin's shop, weilistore, Welcomebiubiu, Winged Victory E-commerce, wxy20170113, xghzhong, xiao xiong, toy store, xiaozhenhong, yangdongxia, ye1234, yunbosi, yunhua store, ywyoyo, zhejiang bigbighouse trade, ZLQ-VN and zou3133	N/A
Defaulting Defendants	158, Dreamslink Firm, duozifengcai123, freely shopping, FUDAN, jiangxinanchang527, jingxiaopu, Long long market, mppy qqq y0y0 101, Self Montessori, shenzhenshijingchengyouxiangongsi, shizhushuop, sunhappybuy, tiantianfashion, tommy, yangdongxia, ywyoyo and zhejiang bigbighouse trade	N/A
Wish	A San Francisco, California-based, online marketplace and e-commerce platform located at Wish.com, which is owned by ContextLogic, Inc., that allows manufacturers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon	N/A

	information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York.	
Sealing Order	Order to Seal File entered on February 27, 2018	Dkt. 1
Complaint	Plaintiffs' Complaint filed on February 27, 2018	Dkt. 6
Application	Plaintiffs' <i>ex parte</i> application for: 1) a temporary restraining order; 2) order restraining assets and Merchant Storefronts (as defined <i>infra</i>); 3) order to show cause why a preliminary injunction should not issue; 4) an order authorizing alternative service by electronic means and 5) an order authorizing expedited discovery filed on February 27, 2018	Dkts. 12-16
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiffs' Application	Dkt. 13
Harris Dec.	Declaration of Christopher Harris in Support of Plaintiffs' Application	Dkt. 14
Wolfgang Dec.	Declaration of Brieanne Scully in Support of Plaintiffs' Application	Dkt. 15
TRO	1) Temporary Restraining Order; 2) Order Restraining assets and Merchant Storefronts; 3) Order to Show Cause Why a Preliminary Injunction Should Not Issue; 4) Order Authorizing Alternative Service by Electronic Means and 5) Order Authorizing Expedited Discovery entered on February 28, 2018	Dkt. 18
PI Show Cause Hearing	March 13, 2018 hearing to show cause why a preliminary injunction should not issue.	N/A
PI Order	March 13, 2018 Preliminary Injunction Order	Dkt. 5
User Account(s)	Any and all websites and any and all accounts with online marketplace platforms such as Wish, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Merchant Storefronts	Any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them	N/A
Bunchems Products	Colorful, quarter-sized, plastic balls that can be connected and squished together to form different shapes, characters and other creations	N/A
Bunchems Mark	U.S. Trademark Registration No. 4,980,743 for "BUNCHEMS" for a variety of goods in Classes 16 and 28	N/A

Bunchems Works	U.S. Copyright Registration No. VA 1-999-337, covering the Bunchems Mega Pack 400 packaging artwork, U.S. Copyright Registration No. VA 2-014-509, covering the Bunchems Bugs Creation Pack 1.0 packaging artwork and U.S. Copyright Registration No. VA 2-014-510, covering the Bunchems Pets Creation Pack 1.0 packaging artwork, as well as numerous common law copyrights	N/A
Counterfeit Products	Products bearing or used in connection with the Bunchems Mark and/or Bunchems Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Bunchems Mark and/or Bunchems Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Bunchems Mark and/or Bunchems Works and/or products that are identical or confusingly or substantially similar to Bunchems Products	N/A
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)	N/A
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)	N/A
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as ContextLogic, PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer") and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants	N/A
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by ContextLogic, such as Wish, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise	N/A
Defendants' Frozen Assets	Defendants' Assets from Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action	N/A
Plaintiffs' Motion for Default Judgment	Plaintiffs' Application for an Order to Show Cause Why Default Judgment and a Permanent Injunction should not be entered Against Defaulting Defendants filed on March 5, 2020	80-83

Scully Aff.	Affidavit by Brienne Scully in Support of Plaintiffs' Motion for Default Judgment	81
Wish Discovery	The supplemental report identifying Defendants' Infringing Product Id, Merchant ID and sales of Counterfeit Products, among other things, provided by counsel for to Plaintiffs' counsel pursuant to the expedited discovery ordered in both the TRO and PI Order	N/A

This matter comes before the Court by motion filed by Plaintiffs for the entry of final judgment and permanent injunction by default against Defaulting Defendants for Defaulting Defendants' trademark infringement, trademark counterfeiting, copyright infringement, false designation of origin, passing off and unfair competition and related state and common law claims arising out of Defaulting Defendant's unauthorized use of Plaintiffs' Bunchems Mark and Bunchems Works, without limitation, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying or offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Memorandum of Law and Affidavit of Brienne Scully in support of Plaintiffs' Motion for Default Judgment and a Permanent Injunction Against Defaulting Defendants, the Certificate of Service of the Summons and Complaint, the Certificate of the Clerk of the Court stating that no answer has been filed in the instant action, and upon all other pleadings and papers on file in this action, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. Defaulting Defendants' Liability

- 1) Judgment is granted in favor of Plaintiffs on ~~all claims properly plead against Defaulting Defendants in the Complaint,~~ their claims of trademark infringement, trademark counterfeiting, and copyright infringement as stated in the Court's Opinions dated May 28, 2020 and September 4, 2020.

II. Damages Awards

- 1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiffs have sufficiently set forth the basis for the statutory damages award requested in its Memorandum of Law in Support of its Motion for Default

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Glossary.

Judgment, the Court finds such an award to be reasonable and Plaintiffs are awarded statutory damages against each of the Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act as follows (“Defaulting Defendants’ Individual Damages Award”), plus post-judgment interest, as follows:

DEFAULTING DEFENDANT	STATUTORY DAMAGES
duozifengcai123	\$1,258.68
jiangxinanchang527	\$6,567.81
Dreamslink Firm	\$12,000
shizhushuop	\$12,000
shenzhenshijingchengyouxiangongsi	\$20,000
FUDAN	\$25,000
ywyoyo	\$30,000
Long long market	\$40,000
sunhappybuy	\$45,000
yangdongxia	\$50,000

freely shopping	\$70,000
mppy qqy y0y0 101	\$100,000
Tommy	\$200,000
zhejiang bigbighouse trade	\$200,000
158	\$400,000
jingxiaopu	\$600,000
tiantianfashion	\$1,000,000
Self Montessori	\$4,000,000

III. Permanent Injunction

- 1) IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Defaulting Defendant, its respective officers, agents, servants, employees and all persons acting in active concert with ~~or under the direction of~~ Defaulting Defendants (regardless of whether located in the United States or abroad), who receive actual notice of this Order are permanently enjoined and restrained from:

- A. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products

- or any other products bearing the Bunchems Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the Bunchems Mark and/or incorporating the Bunchems Works and/or artwork that is substantially similar to, identical to and constitute infringement of the Bunchems Works;
- B. directly or indirectly infringing in any manner Plaintiffs' Bunchems Mark and Bunchems Works;
- C. using any reproduction, counterfeit, copy or colorable imitation of Plaintiffs' Bunchems Mark or Bunchems Works to identify any goods or services not authorized by Plaintiffs;
- D. using Plaintiffs' Bunchems Mark or Bunchems Works, or any other marks or artwork that are confusingly or substantially similar to the Bunchems Mark or Bunchems Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- E. using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants with Plaintiffs, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by

Defaulting Defendants and Defaulting Defendants' commercial activities by Plaintiffs;
and

F. effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

- 2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defaulting Defendants must deliver up for destruction to Plaintiffs any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe Plaintiffs' Bunchems Mark or Bunchems Works or bear any marks or artwork that are confusingly or substantially similar to the Bunchems Mark or Bunchems Works pursuant to 15 U.S.C. § 1118;

IV. Miscellaneous Relief

- 1) Defaulting Defendants may, upon proper showing and two (2) business days written notice to the Court and Plaintiffs' counsel, appear and move for dissolution or modification of the provisions of this Order;
- 2) Any failure by Defaulting Defendants to comply with the terms of this Order shall be deemed contempt of Court, subjecting Defaulting Defendant to contempt remedies to be determined by the Court, including fines and seizure of property;
- 3) The Court releases the Twenty-Five Thousand U.S. Dollar (\$25,000.00) security bond that Plaintiffs submitted in connection with this action to counsel for Plaintiffs, Epstein Drangel, LLP, 60 East 42nd Street, Suite 2520, New York, NY 10165; and

- 4) This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Order.

SO ORDERED.

SIGNED this 5 day of October, 2020, at 5:30 p.m.

A handwritten signature in black ink, appearing to read "L. Liman", is written over a horizontal line.

HON. LEWIS J. LIMAN
UNITED STATES DISTRICT JUDGE